

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY
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No. 46600-7-II
COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

In Re:

JENNIFER A. CRANE (F/K/A BROWN),
Respondent,

v.

TERRY L. BROWN,
Appellant.

BRIEF OF RESPONDENT

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ORIGINAL

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STATEMENT OF THE CASE

On October 22, 2004, the Pierce County Superior Court dissolved the marriage of Appellant, Terry Lee Brown (herein "Brown"), and Jennifer Crane, fka Brown (herein "Crane"). Brown and Crane have two children, Lane, now age 16, and Hadley, now age 14. CP 77. Pursuant to the Amended Final Parenting Plan entered when the marriage was dissolved, the children reside primarily with Crane, with a residential schedule for Brown. CP 77-87.

On January 27, 2012, the Court entered a Judgment and Order of Child Support. CP 55-66. The Court set Crane's net monthly income at \$2,897.52 and Brown's net monthly income at \$6,456.94. CP 57. The Court considered Brown's base salary, overtime, and VA disability income in reaching this amount. CP 67. The standard calculation based on these incomes was \$1,502.13 increasing to \$1,660.14 (effective September 1, 2012) due to Hadley changing age brackets. CP 58. The Court entered a whole family deviation due to Mr. Brown having a new child to support,

resulting in a total support obligation of \$1,264.77, increasing to \$1,386.90, effective September 1, 2012. CP 58.

Crane most recently filed a Motion and Declaration for Adjustment of Child Support on May 19, 2014, in which she requested all sources of Brown's income be considered by the Court in determining the Brown's child support obligation. CP 88-132. The matter came before Pro Tem Commissioner, W. Stephen Gregorich on June 19, 2014. June 19, 2014 VRP.

On June 19, 2014, the Court entered a final Order of Child Support. CP 259-74. The Court adopted Crane's child support worksheets, and granted Brown a whole family deviation. CP 259-274. The Court Order contained the following provision:

3.6 Standard Calculation

\$1,847 per month. (See Worksheet line 17.)

3.7 Reasons for Deviation from Standard Calculation

The child support amount ordered in paragraph 3.5 deviates from the standard calculation for the following reasons:

Other reason(s) for deviation:

A whole family deviation is provided to the father.

The factual basis for these reasons is as follows:

The father has children born of his current marriage.

CP 262. The standard calculation was based upon Brown's net monthly income of \$7,586.00, and Crane's net monthly income of \$3,966.00. CP 261. The Court considered all Brown's sources of income, including his Fire District #17 salary, Union position pay, and VA Disability pay. CP 270. Brown's child support obligation after the whole family deviation is \$1,500.00. CP 262.

Brown filed a Motion for Revision on June 19, 2014. CP 277. The parties came before Judge Tollefson on July 18, 2014, and again on July 25, 2014, for the Court's decision. July 18, 2014 VRP; July 25, 2014 VRP. The Court held that all of Brown's sources of income should be considered, including his Fire District #17 salary, Union position pay, and VA Disability pay. July 25, 2014 VRP 18:13-22. The Court also held that a deviation had been granted. VRP 19:9-18. The Court entered an Order on Motion for Revision on July 31, 2014, denying Brown's Motion for Revision. CP 268-87.

Brown filed a timely Notice of Appeal to Court of Appeals and this appeal follows.

QUESTIONS PRESENTED

1. Did the Trial Court err by failing to include mandatory income deductions when determining Appellant's income for purposes of child support?
2. Did the Trial Court err by failing to include bonus income for both the Appellant and Respondent and further failing to include findings to support the discretionary deviation?
3. Did the Trial Court abuse its discretion by awarding Appellant's request for a whole family deviation for child support as allowed in RCW 26.19.075?
4. Should the Court order Appellant to pay Respondent's attorney fees incurred in responding to this appeal?

ARGUMENT AND ANALYSIS

1. Standard of Review

The trial court has broad jurisdiction to modify child support provisions. In re Marriage of Dodd, 120 Wn.App. 638, 644, 86 P.3d 801 (2004). Reviewing courts should apply an abuse of discretion standard and "cannot substitute [their] judgment for that of the trial court unless the trial court's decision rests on unreasonable or untenable grounds." Goodell v. Goodell, 130 Wn. App. 381, 388, 122 P.3d 929 (2005).

2. The Trial Court did err by failing to include mandatory income deductions when determining Appellant's income for purposes of child support.

Pursuant to the Washington State Child Support guidelines, all income of the parties should be disclosed and considered by the Court when establishing child support. RCW 26.19.071. Under RCW 26.09.071(5), mandatory pension plan payments, mandatory union dues, and state industrial insurance premiums must be disclosed and deducted from gross monthly income. RCW 26.09.071(5)(c)-(e).

In the present case, the Trial Court did not include Brown's mandatory pension plan payments, mandatory union dues, and state industrial insurance premiums, and as a result, did not deduct these amounts from his gross monthly income. Therefore, this issue should be remanded to the Trial Court.

3. The Trial Court did err by failing to include bonus income for both the Appellant and Respondent and further failing to include findings to support the discretionary deviation.

Pursuant to the Washington State Child Support guidelines, all income of the parties should be disclosed and considered by the court when establishing child support. RCW 26.19.071. Under RCW 26.19.071(3)(r), bonuses must be included in gross monthly income. RCW 26.19.071(3)(r). If the court determines that the bonus is nonrecurring income pursuant to RCW 26.19.075(b), "the court may deviate from the standard calculation based on a finding

that a particular source of income included in the calculation of the basic support obligation is not a recurring source of income. RCW 26.09.075(b).

In the present case, the Trial Court did not include either Crane's bonus or Brown's bonus in the parties' respective gross monthly income, and did not provide a finding to support the implied deviation for both parties. Therefore, this issue should be remanded to the Trial Court for inclusion of bonus income for each party and consideration of any possible deviation resulting from the bonus income.

4. The Trial Court did not abuse its discretion by awarding Appellants request for a whole family deviation for child support as allowed in RCW 26.19.075.

The Court may deviate from the standard child support calculation "when either or both of the parents before the court have children from other relationships to whom the parent owes a duty of support." RCW 26.19.075(1)(e). When the Court chooses to deviate from the standard child support calculation, the Court must "enter findings that specify reasons for any deviation or any denial of a party's request for any deviation from the standard calculation made by the court." RCW 29.19.075(3).

In the present case, the Trial Court's order states that a whole family deviation was awarded and that the standard support calculation is reduced to \$1,500.00 as a result. Furthermore, RCW 26.19.075 states that the Court *may* deviate, meaning the decision to do so is discretionary. RCW 26.09.075. It was within the Trial Court's discretion to deviate from the standard calculation under RCW 26.09.075(1)(e). The Trial Court complied with RCW 26.09.075(3) because it stated that a whole family deviation was provided to Brown and the reason for the deviation was his need to support his children from his current marriage.

Brown simply misstates facts when he asserts the Trial Court failed to grant him a whole family deviation. Despite what the Commissioner may have said during the initial hearing, the Order clearly sets out a deviation and Brown's transfer payment was ordered to be less than the standard calculation.

Brown's argument lacks merit and the Trial Court's decision to provide a whole family deviation to Brown was within the sound discretion of the Trial Court. The Trial Court's decision to provide Brown a whole family deviation resulting in a total support obligation of \$1,500.00 should be upheld.

5. The Court should award Ms. Crane her reasonably incurred attorney's fees for having to defend against this appeal because she has the need and Mr. Brown has the ability to pay.

Pursuant to RCW 26.09.140, the appellate court has the ability to award attorney fees for actions falling within the purview of RCW 26.09. The statute states in pertinent part as follows:

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs.

Crane asks the Court to provide an award of attorney fees to her pursuant to RCW 26.09.140. Pursuant to Washington State Rule on Appeal (RAP) 18.1, Crane will file an Affidavit of Financial Need, which will show that she does not make a substantial income, and her expenses, including those related to this appeal, exceed her income. She submits that Mr. Brown has the ability to pay her fees.

Crane has also tendered to Brown an offer to compromise this matter by stipulating to issues I and II set forth in Brown's Brief of Appellant, and suggesting that the matter be remanded to the Trial Court for recalculation of the parties' incomes and a reconsideration of any potential deviations based on the new incomes. Brown has yet to reject or accept Crane's proposal.

The Court should find that Ms. Crane has the need for an award of fees and that Mr. Brown has the ability to pay.

CONCLUSION

The argument set forth by Brown in this appeal is an inappropriate waste of time and resources for both the Court and the parties. The Court should affirm the decision of the Trial Court in this matter and should require Brown to pay all attorney's fees and costs incurred by Crane in defending against this appeal.

Respectfully submitted this 30th day of April, 2015.

McGavick Graves, P.S.

A handwritten signature in black ink, appearing to read 'Barbara Jo Sylvester', with the number '34462' written to the right of the signature.

Barbara Jo Sylvester, WSB#7856
Attorneys for Respondent/Crane

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the 30th day of April, 2015, he filed the original Financial Declaration of Respondent plus one true and correct copy thereof with the Court of Appeals, Division II, and a true and correct copy of the same for delivery to the following counsel of record:

Andrew Helland, WSB#43181
Attorney for Appellant Terry L. Brown, Sr.

And had delivered by carrier, at Tacoma, Washington, a true and correct copy of Brief of Respondent to Andrew Helland, attorney for Appellant, at the address below:

Law Office of Robert Helland
960 Market Street
Tacoma, WA 98402

DATED this 30th day of April, 2015, at Tacoma, Washington.

McGAVICK GRAVES, P.S.


Tracie Romeo